

REMARKS

Claims 1-36 are currently amended. New claims 37-40 are added. As a result, claims 1-40 remain pending in the application.

Rejection of Claim 5 under 35 USC §112, Second Paragraph

Claim 5 stands rejected under 35 U.S.C. §112, second paragraph as being indefinite because “it is unclear how the massive ball-shaped graphite particles, the carbon fibers and the graphite flakes can each have the same average particle size.” The claim does not require that multiple averages be independently determined for the ball-shaped particles, fibers and flakes. The claim requires that a single average be determined that includes the particle sizes for the ball-shaped particles, fibers **and** flakes. As a result, the ball-shaped particles, fibers **and** flakes can each have vastly different average particle sizes but the overall average can fall within the specified range.

Rejection of Claims 1, 14 and 30 under 35 USC §102(e)

Independent Claims 1, 14, and 30 stand rejected under 35 U.S.C. §102(e) as being anticipated by US Patent Pub. No. 2004/0043293 (Nagata).

Independent Claims 1, 14, and 30 each specify an electrode coating that includes ball-shaped graphite particles, carbon fibers, graphite flakes. Each of these claims is amended to specify that “the ball shaped graphite particles include smaller graphite particles arranged such that the ball shaped graphite particles are isotropic.”

“To anticipate a claim, the reference must teach every element of the claim.” See MPEP §2131. Accordingly, Nagata must teach ball shaped graphite particles including smaller graphite particles arranged such that the ball shaped graphite particles are isotropic. Nagata teaches the use of hard spheres and mesocarbon microbeads in particular. However, Mesocarbon microbeads are anisotropic in direct contrast to Independent Claims 1, 14, and 30 (See US Patent No. 6,294,291, C2, L57). As a result, Nagata does not teach every element of the amended claims and accordingly does not anticipate the claims.

Rejection of Independent Claims 1, 14, and 30 under 35 USC §103

Independent Claims 1, 14, and 30 stand rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 6,294,291 (Ozaki).

Independent Claims 1, 14, and 30 each specify an electrode coating that includes ball-shaped graphite particles, carbon fibers, graphite flakes. Each of these claims is amended to specify that “the ball shaped graphite particles include smaller graphite particles arranged such that the ball shaped graphite particles are isotropic.”

To establish a *prima facie* case of obviousness ... “the prior art references (or references when combined) must teach or suggest all the claim limitations.” MPEP §2142. Accordingly, Ozaki must teach or suggest ball shaped graphite particles including smaller graphite particles arranged such that the ball shaped graphite particles are isotropic. However, Ozaki does not teach or suggest isotropic ball shaped particles. In fact, Ozaki directly contrasts the claims by teaching spheres that are “suitable for intercalation/deintercalation reaction because of the anisotropic structure” (C3, L51-52, emphasis added). As a result, Ozaki neither teaches nor suggests every element of the amended claims.

Additionally, Independent Claims 1, 14, and 30 each specify an electrode coating that includes graphite flakes. Accordingly, Ozaki must teach or suggest the use of graphite flakes. However, Ozaki neither teaches nor suggests the use of graphite flakes. Figure 3B is a photograph of mesocarbon microbeads (MCMB, C5, L45). Ozaki teaches that MCMB is an example of spheres (C2, L57). Accordingly, Ozaki teaches that Figure 3 is a photograph of spheres. In view of this teaching, Ozaki Figure 3 suggests the use of graphite flakes. As a result, Ozaki neither teaches nor suggests every element of the amended claims.

As noted above, Ozaki does not teach or suggest the use of ball shaped particles that include smaller graphite particles arranged such that the ball shaped graphite particles are isotropic. Additionally, Ozaki does not teach or suggest the use of graphite flakes. For either of these reasons alone, Independent Claims 1, 14, and 30 are patentable over Ozaki. Further, the argument for the patentability of Independent Claims 1, 14, and 30 becomes even stronger when these reasons are considered in combination.

CONCLUSION

In light of the new Claims presented above, Applicants believe they are entitled to a letters patent. The Examiner is encouraged to telephone the undersigned with any questions.

Respectfully submitted



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